

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRYSTIN HERNANDEZ, NATALIE BAKER, ETHAN)
CHIEL, KYLA RASKIN, REX SANTUS, ROXANNE)
ZECH, RAFAEL-LEV GILBERT, SARAH MILLS-)
DIRLAM, AUGUST LEINBACH, JALEN MATNEY,)
JONATHAN DAVIS, and DAVID HOLTON,)
Plaintiffs,)
-against-)
THE CITY OF NEW YORK; NEW YORK CITY)
MAYOR BILL DE BLASIO; NEW YORK POLICE)
DEPARTMENT ("NYPD") COMMISSIONER DERMOT)
SHEA; NYPD CHIEF OF DEPARTMENT TERENCE)
MONAHAN; NYPD DEPUTY COMMISSIONER FOR)
LEGAL MATTERS ERNEST F. HART; NYPD)
ASSISTANT CHIEF KENNETH LEHR; NYPD LEGAL)
BUREAU SERGEANT KENNETH RICE; NYPD)
STRATEGIC RESPONSE GROUP ("SRG") MEMBER)
FIRST NAME UNKNOWN ("FNU") RABEL; NYPD)
SUPERVISOR FNU HYLAND; AND NYPD MEMBERS)
JOHN AND JANE DOES 1-157,)
Defendants.)
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**[PROPOSED]
JUDGMENT PURSUANT
TO RULE 68**

21-cv-07406 (CM)(GWG)

WHEREAS, Plaintiffs commenced this action by filing a complaint on September 2, 2021 alleging that Defendants violated Plaintiffs' rights under the federal constitution and state law; and

WHEREAS, on July 7, 2022, pursuant to Rule 68 of the Federal Rules of Civil Procedure, Defendants offered to allow Plaintiffs to take judgment against the City of New York for Plaintiffs' federal claims; and

WHEREAS, on July 20, 2022, Plaintiffs accepted Defendants' Rule 68 Offer of Judgment;

NOW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Pursuant to Rule 68 of the Federal Rules of Civil Procedure, Plaintiffs will take judgment against defendant City of New York in this action for the total sum of Ten Thousand and One (\$10,001.00) Dollars for plaintiff Krystin Hernandez, Two Thousand Five Hundred and One (\$2,501) Dollars for plaintiff Natalie Baker, Four Thousand Five Hundred and One (\$4,501) Dollars for plaintiff Ethan Chiel, Two Thousand Five Hundred and One (\$2,501) Dollars for plaintiff Kyla Raskin, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Rex Santus, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Roxanne Zech, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Rafael-Lev Gilbert, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Sarah Mills-Dirlam, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff August Leinbach, Four Thousand Five Hundred and One (\$4,501) Dollars for plaintiff Jalen Matney, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Jonathan Davis, and Four Thousand and One (\$4,001) Dollars for plaintiff David Holton, plus reasonable attorneys' fees, expenses, and costs to the date of the offer – July 7, 2022 – for Plaintiffs' federal claims.

2. This judgment shall be in full satisfaction of all federal and state law claims or rights that Plaintiffs may have to damages, or any other form of relief, arising out of the alleged acts or omissions of Defendants or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

3. This judgment shall not be construed as an admission of liability by Defendants or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that Plaintiffs have suffered any damages.

4. In accepting the Defendants' offer of judgment, Plaintiffs release and discharge Defendants; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by Plaintiffs arising out of the facts and circumstances that are the subject of this action.

5. By accepting the offer of judgment, Plaintiffs waive the Plaintiffs' rights to any claim for interest on the amount of the judgment.

6. By accepting the offer of judgment, Plaintiffs agree that the aforesaid payment of Ten Thousand and One (\$10,001.00) Dollars for plaintiff Krystin Hernandez, Two Thousand Five Hundred and One (\$2,501) Dollars for plaintiff Natalie Baker, Four Thousand Five Hundred and One (\$4,501) Dollars for plaintiff Ethan Chiel, Two Thousand Five Hundred and One (\$2,501) Dollars for plaintiff Kyla Raskin, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Rex Santus, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Roxanne Zech, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Rafael-Lev Gilbert, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Sarah Mills-Dirlam, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff August Leinbach, Four Thousand Five Hundred and One (\$4,501) Dollars for plaintiff Jalen Matney, Three Thousand Five Hundred and One (\$3,501) Dollars for plaintiff Jonathan Davis, and Four Thousand and One (\$4,001) Dollars for plaintiff David Holton within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless Plaintiffs received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If any Plaintiff is a Medicare recipient who received

medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date the Plaintiff submits to Counsel for Defendants a final demand letter from Medicare.

7. By acceptance of this Rule 68 Offer of Judgment, Plaintiffs agree to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiffs further agree to hold harmless defendants and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

Dated: New York, New York
July __, 2022

HON.